

## REMARKS

Applicants respectfully requests reconsideration of the instant application in view of the following remarks. No new claims and no new matter have been added.

### Rejections under 35 USC §102/103

The Examiner has rejected claims 1-8, 10-23, 26-27, 29-32, 34-35, 37, 39-46 and 49-89 (these claims include each of the pending independent claims) under § 102(e) in view of US Patent Number 6,523,166 to Mishra (the “Mishra patent”). Claims 9, 27, 33, 36, 38, 47 and 48 have been rejected under 35 U.S.C. § 103(a), as being unpatentable over the Mishra patent, in view of Austin, US Patent No. 6,370,569. Claims 24 and 25 have been rejected under 35 U.S.C. § 103(a), as being unpatentable over the Mishra patent, in view of Boesch, US Patent No. 6,370,569. The Mishra patent was filed on September 21, 1998.

Applicants have previously amended the instant application to claim priority to parent application 09/040,972, now US Patent No. 6,324,685. The parent application was filed on March 18, 1998. Applicants have also filed a supplemental Declaration to complete Applicants’ claim to priority. In view of this priority claim, Applicants respectfully submit that the Mishra reference is not properly citeable under 35 USC § 102(e).

The Examiner asserts that, “Priority is denied because the applicant has not perfected priority” citing CFR § 1.78(a)(2)(ii), which details time constraints for perfecting the priority claims for “later-filed applications” (e.g., the instant application) (See, Office Action, page 20-21).

Applicants respectfully submit that time constraints in CFR § 1.78(a)(2)(ii) do not apply to the instant application. More specifically, CFR § 1.78(a)(2)(ii) includes three exceptions, “The time periods in this paragraph do not apply if the later-filed application is... (B) An application filed under 35 U.S.C. § 111(a), before November 29, 2000....” (See, CFR

§ 1.78(a)(2)(ii)). The instant application was filed on October 16, 2000. Therefore, Applicants submit that the instant application qualifies as an application within exception B in CFR § 1.78(a)(2)(ii) and that the priority perfected.

Accordingly, Applicants submit that Mishra patent is not a valid reference under 35 U.S.C. §§ 102(e) or 103(a). Therefore, Applicants request withdrawal of this ground of rejections.

### CONCLUSION

In view of the aforementioned remarks, Applicants respectfully submit that all of the claims now pending in the application are in condition for allowance, which action is earnestly solicited.

If any issues are apparent, or if the Examiner has any suggestions to expedite prosecution, he is invited to contact the undersigned at the telephone number below.

### AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for this amendment, or credit any overpayment to Deposit Account 13-4500, Order No. 3802-4032.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 13-4500, Order No. 3802-4032. A DUPLICATE OF THIS DOCUMENT IS ATTACHED.

Respectfully submitted,  
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By: 

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